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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,698	10/23/2003	John E. Bennett	DE012	9786

7590

10/07/2005

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EXAMINER

CAMPBELL, KELLY E

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*mu*

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/692,698	BENNETT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kelly E. Campbell	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 33-38 and 42 is/are allowed.  
6) ☒ Claim(s) 1-26, 28 and 39 is/are rejected.  
7) ☒ Claim(s) 27 and 29-32 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*EA*

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8,11,13,15/13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloswick (US 5,513,867).

Bloswick teaches an adjustable height seat including:

a wheel chair frame (12) having a back (14), front (16) and two sides (18);

a telescoping support (60) inclined away from the vertical towards the front (16) and mounted to the chair frame, a seat (40) supported on the telescoping support (60), a spring (48) normally urging the telescoping support towards an elevated condition, see Column 3, lines 20-25;

the telescoping support mounted on riser seat frame (45,62);

the telescoping support being operative for raising and lowering the seat (40) relative to the chair frame (12) responsive to the repositioning of a user's weight on the seat, see Column 5, lines 65-67 and Column 6, lines 1-14;

the telescoping support having upper member (68) receiving the seat (40) and telescopically slidable relative to and within a lower member (66);

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wherein the seat (40) is depressed to a lowered position when the user's body assumes a reclined position and the body weight overcomes the spring (48), see Column 6, lines 31-45;

the telescoping support being attached via bolts and thus quite capable of being removed;

With regards to the telescoping support "frictionally arrested against substantial movement", if a user quickly "backs into" the seat bottom (40), the telescoping assembly will be subjected to a bending-type force, and the upper telescoping member (68) will be forced against the lower telescoping member (66) frictionally.

Also, wherein if the riser telescoping assembly were removable, the seat (40) would thus become a non-riser seat, in the absence of the riser telescoping assembly.

Claims 1,15 and 39-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Logan, JR US 5,626,389.

Logan, jr. teaches an adjustable height seat including:

a chair frame (14) having a back (454), front and two sides (24,26);

a telescoping support (402) inclined away from the vertical towards the front and mounted to the chair frame, a seat (400) supported on the telescoping support (402), a spring (415) normally urging the telescoping support towards an elevated condition;

the telescoping support mounted on the seat frame;

the telescoping support being operative for raising and lowering the seat (400) relative to the chair frame (14) responsive to the repositioning of a user's weight on the

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seat, see Column 5, lines 65-67 and Column 6, lines 1-14; wherein the seat retains its angular orientation relative to the wheelchair frame as the seat rises and lowers.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bloswick (US 5,513,867) as applied above, and further in view of Paul (US 5,011,224).

Paul teaches a gas spring (60) for biasing a riser seat (18) in the elevated position.

It would have been obvious to one of ordinary skill in the art to modify the riser seat of the wheelchair taught by Bloswick to include a gas spring configuration as taught by Paul, for biasing the seat, since it is well known in the art, that coil springs and gas springs would be art recognized equivalents and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

Claim 10, 14, 15/14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloswick (US 5,513,867) as applied above, and further in view of Watkins (US 6,345,835).

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Bloswick teaches all aspects of the claimed invention including, referring to Figure 6, a folding wheelchair having left and right sub assemblies and having a scissor arrangement (Figure 6) including cross braces connecting sub assemblies and joined for scissor movement. .

Watkins teaches a folding wheel chair including a seat bottom (140) and seat back (118) , see Figure 1;

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a separate seat bottom and “removable” seat elevation assembly as taught by Bloswick et al, for the folding wheelchair assembly as taught by Watkins, in order to provide assistance to a user, unable to stand or sit comfortably on their own.

With regards to claim 10, it would have been obvious to one of ordinary skill in the art to modify the telescoping members to be rectangular in cross section, since such a modification would have involved a mere change in the shape of a component.

A change in shape is generally recognized as being within the level of ordinary skill in the art.

Claim s 19-26,28 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloswick (US 5,513,867) in view of Logan Jr, (US 5,626,389) and Watkins (US 6,345,835).

Bloswick teaches an adjustable height seat including:

a wheel chair frame (12) having a back (14), front (16) and two sides (18);

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a telescoping support (60) inclined away from the vertical towards the front (16) and mounted to the chair frame, a seat (40) supported on the telescoping support (60), a spring (48) normally urging the telescoping support towards an elevated condition, see Column 3, lines 20-25;

the telescoping support mounted on riser seat frame (45,62);

the telescoping support being operative for raising and lowering the seat (40) relative to the chair frame (12) responsive to the repositioning of a user's weight on the seat, see Column 5, lines 65-67 and Column 6, lines 1-14;

the telescoping support having upper member (68) receiving the seat (40) and telescopically slidable relative to and within a lower member (66);

wherein the seat (40) is depressed to a lowered position when the user's body assumes a reclined position and the body weight overcomes the spring (48), see Column 6, lines 31-45;

Bloswick et al teaches all aspects of the claimed invention including, referring to Figure 6, a folding wheelchair having left and right sub assemblies and having a scissor arrangement (Figure 6) including cross braces connecting sub assemblies and joined for scissor movement.

Logan, Jr teaches a seat (400) capable of being raised in lowered in its entirety and maintaining the angular orientation relative to the chair; a chair frame (14) having a back (454), front and two sides (24,26);

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a telescoping support (402) inclined away from the vertical towards the front and mounted to the chair frame, a seat (400) supported on the telescoping support (402), a spring (415) normally urging the telescoping support towards an elevated condition;

the telescoping support mounted on the seat frame;

the telescoping support being operative for raising and lowering the seat (400) relative to the chair frame (14) responsive to the repositioning of a user's weight on the seat, see Column 5, lines 65-67 and Column 6, lines 1-14; wherein the seat retains its angular orientation relative to the wheelchair frame as the seat rises and lowers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the wheelchair lift mechanism to include the seat raising assembly taught by Logan Jr, in order to lift a sitting person to the standing position or lower a standing person to the sitting position with minimal back strain by avoiding the bending over of the individual required to sit their "bottom" on a "seat" pivotally attached to the seat frame at an angle during raising and lowering.

Watkins teaches a folding wheel chair including a seat bottom (140) and seat back (118) with removable seat, see Figure 1;

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a separate seat bottom and "removable" seat elevation assembly as taught by Boswick et al modified by Logan, Jr, for the folding wheelchair assembly as taught by Watkins, in order to provide assistance to a user, unable to stand or sit comfortably on their own.



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With regards to claim 10, it would have been obvious to one of ordinary skill in the art to modify the telescoping members to be rectangular in cross section, since such a modification would have involved a mere change in the shape of a component.

A change in shape is generally recognized as being within the level of ordinary skill in the art.

### ***Allowable Subject Matter***

Claims 27,29-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 33-38 and 42 are allowed.

### ***Response to Arguments***

Applicant's arguments filed 7/7/2005 have been fully considered but they are not persuasive. With regards to applicant's amending claims in the application to recite that the "entire seat rises relative to the wheelchair frame"; a seat by definition is a part or surface on or in which another part or surface rests, per Merriam-Webster's Collegiate Dictionary 10<sup>th</sup> edition, 2000. Thus, the seat of the wheelchair taught by Bloswick et al being the top surface of member (40) and the entire "seat" or top surface is operatively raised and lowered.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E. Campbell whose telephone number is (571) 272-6693. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

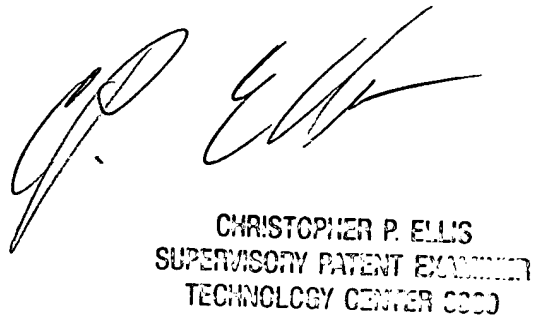
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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